

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF NEBRASKA

This matter is before the Court on cross-motions of the parties. Plaintiff Prism moves (Filing No. [309](#)) for a protective order preventing defendant Sprint from expanding the scope of this Court's prior order (Filing No. [306](#)). Defendant Sprint asks the Court to adopt its interpretation of that same order and allow a hearing (Filing No. [310](#)). The Court has reviewed the materials and finds as follows.

The parties have made their alternative positions known to the Court and the arguments will not be restated here. Essentially, Sprint wishes to enlarge the scope of this Court's previous order. In that order, the Court struck Mr. Malackowski's expert report to the extent that one of his damage theories relied upon information protected by the Protective Order. Now, after the parties briefed the Court in preparing and deciding the previous order, Sprint wishes to interpret the Court's order in such a way as to strike materials never

complained of in AT&T's briefs and not contemplated by the Court in preparing that order. In a previous brief in opposition (Filing No. [296](#)), Prism specifically noted that AT&T did not object to using the Memorandum of Agreement and/or the Settlement Agreement (Filing No. [296](#), at 9). After review of the materials, it is clear that AT&T never objected to the use of such information. Sprint states that this Court prohibited the use of the AT&T Memorandum of Agreement and/or Settlement Agreement in its previous order, but AT&T never moved for such a prohibition and therefore no prohibition occurred.

After review, the Court will deny Sprint's "emergency" motion without prejudice. Sprint may restate the motion as a *Daubert* motion at the appropriate time. Prism's motion will be granted.

IT IS ORDERED:

- 1) Defendant's motion (Filing No. [309](#)) is denied without prejudice.
- 2) Plaintiff's motion (Filing No. [310](#)) is granted.
- 3) Plaintiff's objection to defendant's motion (Filing No. [316](#)) is denied as moot.

4) The parties shall have seven additional days for discovery.

DATED this 6th day of March, 2015.

BY THE COURT:

/s/ Lyle E. Strom

LYLE E. STROM, Senior Judge
United States District Court